

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CLARENCE McKELVEY

Plaintiff

V.

WARDEN AUDREY ENGLAND, ET AL.

Defendants

Case No. 6:19cv515-JDK-KNM

ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE


Plaintiff Clarence McKelvey, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. After ordering the filing of an amended complaint and review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice as frivolous and for failure to state a claim upon which relief may be granted. A copy of this Report was sent to the Plaintiff at his last known address, return receipt requested, but no objections have been filed.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings or clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), cert. denied, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge's Report and Recommendation, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. The Court therefore adopts the Report and Recommendation of the United States Magistrate Judge as the findings of this Court.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report (Docket No. 13) be **ADOPTED**. The above-styled civil action is **DISMISSED WITHOUT PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted. All pending motions are **DENIED** as **MOOT**.

So **ORDERED** and **SIGNED** this **30th** day of **November, 2020**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE